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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 413

CONTINENTAL OIL COMPANY, A CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 1649–1668) is reported in 113 F. (2d) 473. The findings of fact, conclusions of law, order, and direction of election of the National Labor Relations Board (R. 36–79) are reported in 12 N. L. R. B. 789.

JURISDICTION

The judgment of the court below (R. 1696–1699) was entered on August 19, 1940. A petition for rehearing (R. 1669–1693) was denied on July 31, 1940 (R. 1695). The petition for a writ of certiorari

was filed on September 9, 1940. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

As explained in the Argument, *infra*, pp. 6–12, we do not think the following Questions 1 and 2 are properly presented in this case. We agree that Questions 3 and 4 are presented.

1. Whether in the circumstances of this case it was permissible for the Board to order petitioner to reinstate with back pay two discharged employees.

2. Whether the Board may require that an employer pay over to governmental relief agencies sums equal to any amounts disbursed by those agencies for the employment on work relief projects of employees discharged by the employer in violation of the Act.

3. Whether it was permissible for the Board, upon findings that petitioner had refused to bargain collectively with a labor organization designated by a majority of the employees in each of two appropriate units, to require petitioner to bargain with that labor organization as the exclusive representative of the employees in each unit, although the organization may have lost its majorities by the time of the hearing.

4. Whether there was substantial evidence supporting the Board's findings that the labor organization with which petitioner had refused to bargain collectively was the same organization, with only a change in name, as that with which the Board's order required the employer to bargain.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*) are set forth in the Appendix, *infra*, pp. 20–21.

STATEMENT

Upon the usual procedural steps, as to none of which is any question raised,[1] the Board, on May 9, 1939, issued its findings of fact, conclusions of law, order, and direction of election (R. 36–79). In brief outline, and omitting jurisdictional facts, the Board found:[2]

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[1] These, pursuant to Sections 9 and 10 of the National Labor Relations Act, were: charges (R. 92–95), complaint (R. 86–91), amended complaint (R. 96–104), answer (R. 105–116), petition for investigation and certification of representatives (R. 95–96), order directing investigation and consolidating proceedings (R. 105), hearing before a trial examiner, amendment to complaint (R. 116), answer thereto (R. 116–118), intermediate report of the trial examiner (R. 118–152), exceptions thereto (R. 152–180), oral argument (R. 185), and the filing of a brief before the Board.

[2] In addition to the findings summarized, the Board found that petitioner had engaged in certain unfair labor practices in its Salt Creek Field (R. 68–70). Subsequently petitioner

Shortly after the passage of the Act, International Association of Oil Field, Gas Well and Refinery Workers of America, a labor organization herein called the Union, was designated as collective-bargaining representative by a majority of the employees in an appropriate unit at petitioner's Big Muddy Field (R. 42–43), and by a majority of the employees in another appropriate unit at petitioner's Glenrock Refinery (R. 57–58).[2] At various times between August 1935 and May 1936 at Big Muddy, and between August 1935 and March 1936 at Glenrock, the Union met with petitioner in efforts to bargain collectively, but petitioner steadfastly refused to recognize the Union as exclusive bargaining representative of the employees in either unit, or to make *bona fide* efforts to arrive at a collective agreement at either place (R. 43–51, 58–61). The Board accordingly found that in August 1935 and thereafter, petitioner, in violation

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ceased operating in the Salt Creek Field, and for that reason the court below neither enforced nor set aside the Board's order as to that field (R. 1699).

Since the petition does not contest any of the findings of unfair labor practices, we do not detail the evidentiary findings or supporting evidence.

[2] The Board found (R. 41, 43) that in June 1937, the name of International Association of Oil Field, Gas Well and Refinery Workers of America was changed to Oil Workers International Union, but that there was no change in the identity of the labor organization. The validity of the latter finding, which is attacked by petitioner, is discussed *infra*, pp. 17–19. As used herein, the term Union refers to the labor organization under both its names.

of Section 8 (1) and (5) of the Act, refused to bargain collectively with the Union either at Big Muddy (R. 50–51) or at Glenrock (R. 61).

In April 1936 petitioner discriminatorily transferred Ernest Jones and F. D. Moore from Big Muddy because of their membership and activities in the Union. Jones refused to accept the transfer and was discharged. Moore pointed out that his wife was bedridden, whereupon petitioner offered to retain him at Big Muddy for the duration of his wife's illness; when Moore refused to accept employment on this basis, he, too, was discharged (R. 51–56). The Board concluded that petitioner had thereby violated Section 8 (1) and (3) of the Act (R. 56).

At Glenrock petitioner participated in the formation of a labor organization, the Employees Council Plan, in 1934, and supported, interfered with, and dominated it until the Act was upheld by this Court in April 1937; at that time petitioner caused the Plan to be replaced by the Independent Association of Conoco Glenrock Refinery Employees, herein called the Glenrock Association. The Board found that the Glenrock Association was merely a continuation of the Plan, and that petitioner dominated and interfered with the formation and administration of the Glenrock Association, contrary to Section 8 (1) and (2) of the Act (R. 61–65).

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The Board's order required petitioner to cease and desist from its unfair labor practices; to bargain collectively with the Union at Big Muddy and at Glenrock; to offer reinstatement with back pay to Jones and Moore and procure the restoration of certain insurance rights to Moore; to pay over to governmental relief agencies sums equal to any amounts disbursed by those agencies for the employment of Jones and Moore on work-relief projects; to withdraw recognition from and disestablish the Glenrock Association; and to post appropriate notices (R. 76–79).

Petitioner filed a petition in the court below to review and set aside the Board's order (R. 1–20). The Board answered, requesting enforcement of its order (R. 20–27). On June 13, 1940, the court handed down its opinion and entered a short form judgment enforcing the Board's order (R. 1649–1668).[4] A petition for rehearing filed by petitioner (R. 1669–1693) was denied on July 31, 1940 (R. 1695). On August 19, 1940, the court vacated its short form judgment and substituted a long form judgment to the same effect (R. 1696–1699).

ARGUMENT

1. Petitioner challenges the order of the Board reinstating Jones and Moore with back pay, upon

[4] In addition to the provisions summarized above, the Board's order also contained certain provisions as to the Salt Creek Field. As explained in note 2, *supra*, p. 3, these provisions were neither enforced nor set aside by the Court.

the ground that subsequent to their discharge both men lost their status as "employees" (Pet. 12, 19–27). This contention was not urged before the Board, although petitioner filed voluminous exceptions (R. 152–180) to the examiner's intermediate report, which recommended reinstatement with back pay (R. 151). Hence the contention was not properly before the court below. See Section 10 (e) of the Act; *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 790 (C. C. A. 9th, pending on the employer's petition for certiorari, No. 352, this Term); *National Labor Relations Board* v. *National Motor Bearing Co.*, 105 F. (2d) 652, 662 (C. C. A. 9th). While the court below did consider the question (R. 1666), petitioner's failure to raise it before the Board would preclude its consideration in this Court.

Further, the assertion that Jones and Moore lost their status as "employees" is devoid of merit. In the case of Jones, it is predicated on the fact that he purchased a store (R. 57; 343, 393); petitioner argues that a storekeeper "enters the class of an employer" (Pet. 22) and "does not retain his status as an employee" (Pet. 21). But the Act is not concerned with popular conceptions of employee or employer classes. A person may simultaneously be an employee within the meaning and for the purposes of the Act and an employer in another and more general sense. In the case of Moore, petitioner's assertion is predicated on the

fact that he became a guard at the state penitentiary in Rawlins, Wyoming, at a salary of $70 a month with room and board (R. 57; 421, 430, 432–433, 440). Petitioner argues (Pet. 23–24) that this employment is substantially equivalent to Moore's employment with petitioner as an oil field roustabout at $112.50 a month (R. 57; 439, 1625, 1631, 1643).[8] But Moore's employment at a smaller wage, in an unrelated occupation, and in a different city, is not, as a matter of law, substantially equivalent to his employment with petitioner. See *Phelps Dodge Corp.* v. *National Labor Relations Board*, 113 F. (2d) 202 (C. C. A. 2d, pending on the employer's petition for certiorari, No. 387, this Term); *National Labor Relations Board* v. *Botany Worsted Mills*, 106 F. (2d) 263 (C. C. A. 3d); *Subin* v. *National Labor Relations Board*, 112 F. (2d) 326 (C. C. A. 3d); *Mooresville Cotton Mills* v. *National Labor Relations Board*, 110 F. (2d) 179, 97 F. (2d) 959 (C. C. A. 4th); *Hartsell Mills Corp.* v. *National Labor Relations Board*, 111 F. (2d) 291 (C. C. A. 4th); *National Labor Relations Board* v. *Carlisle Lumber Co.*, 99 F. (2d) 533 (C. C. A. 9th), certiorari denied, 306 U. S. 646.[9]

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[8] The rate of pay for roustabouts was increased after Moore's discharge to $125 and subsequently to $135 a month (R. 57; 458–459), a fact bearing on the equivalence of the new employment to the old. Cf. *Mooresville Cotton Mills* v. *National Labor Relations Board*, 110 F. (2d) 179, 182 (C. C. A. 4th).

[9] While the Board made no specific finding as to the equivalence of the two employments, its findings concerning the

The court below, however, did not rest its enforcement of the reinstatement order upon the ground that the two men had not obtained other regular and equivalent employment, but upon the broader principle that a person discriminatorily discharged "has a legally protected tenure intermediate his discharge or discrimination and his reinstatement. The act creates a legal right in the employee, and it authorizes the Board as a remedial measure to order reinstatement with back pay" (R. 1666). Insofar as the decision below thus holds that subsequent employment is immaterial and does not deprive the Board of power to reinstate an unlawfully discharged employee, it is in conflict with decisions of other circuit courts of appeals cited by petitioner (Pet. 20) and with *Phelps Dodge Corp* v. *National Labor Relations Board,* 113 F. (2d) 202 (C. C. A. 2d, pending on the employer's petition for certiorari, No. 387, this Term) which hold that persons obtaining substantially equivalent employment lose their status

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nature of Moore's subsequent employment (R. 57), taken together with its characterization of Moore as an "employee" in determining that reinstatement with back pay was an appropriate remedy (R. 72), would seem tantamount to a finding that the employments were not equivalent. (See *National Labor Relations Board* v. *National Motor Bearing Co.*, 105 F. (2d) 652, 662 (C. C. A. 9th); cf. *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 344, 349). The absence of an explicit finding probably derives from petitioner's failure to raise the issue before the Board.

as "employees" and may not be ordered reinstated. This question is one which has recurred in the administration of the Act, but inasmuch as there was no loss of employee status in this case it is not squarely presented; hence the present case is not an appropriate one for a decision of the question. Moreover, as indicated, we think that consideration of the question is foreclosed entirely by petitioner's failure to raise it before the Board.

Petitioner's further assertion that the Board improperly ordered petitioner to reimburse Jones for "pecuniary losses he may have sustained in the conduct of his general merchandise store." (Pet. 24) is plainly inaccurate. The Board did nothing of the kind; it merely ordered petitioner to make Jones whole for any loss of pay he may have suffered as a result of petitioner's discrimination (R. 78).

Petitioner's contention (Pet. 27) that the Board should not have awarded back pay to Moore because he would have sustained no loss had he accepted petitioner's offer to allow him to remain at Big Muddy for the duration of his wife's illness *supra,* p. 5) is likewise without merit; the Board was not required to penalize Moore because he rejected demotion based upon his union activities from a permanent to a temporary status. Further, the contention presents no question of general importance.

2. Petitioner asserts (Pet. 27–29) that the judgment below, in so far as it enforces the provision (R. 78) of the Board's order which requires petitioner to pay over to governmental relief agencies sums equal to any amounts disbursed by these agencies for the employment on work relief projects of Jones and Moore, is in conflict with *National Labor Relations Board* v. *Leviton Mfg. Co.*, 111 F. (2d) 619 (C. C. A. 2d), *M. H. Ritzwoller Co.* v. *National Labor Relations Board*, decision upon rehearing July 16, 1940 (C. C. A. 7th), and *National Labor Relations Board* v. *Tovrea Packing Co.*, 111 F. (2d) 626 (C. C. A. 9th). In the cited cases and in *National Labor Relations Board* v. *Waumbec Mills, Inc.*, decided August 20, 1940 (C. C. A. 1st), similar work relief agency provisions were disapproved and denied enforcement, and in *Republic Steel Corp.* v. *National Labor Relations Board*, No. 14, this Term, this Court granted certiorari, limited to the work relief agency question. In the present case, however, petitioner raised no question concerning the "work relief" provision when the validity of the Board's order was under consideration by the court below; indeed, its brief expressly excluded that provision from consideration.[1] The

[1] Petitioner's brief below, while attacking the reinstatement and back pay provisions of the order as beyond the power of the Board and as arbitrary, stated expressly that "certain deductions" in "Par. (g), P. 78" [i. e., the work relief provision], are "not involved here." Brief of Petitioner, No. 1902, filed November 1939, Circuit Court of Appeals for the Tenth Circuit, p. 55.

court below made no mention of the provision, even in its summary of the Board's order (R. 1650–1651). Only after the court had entered its judgment (R. 1668) did petitioner first raise the point, among numerous other contentions, in a petition for rehearing (R. 1669–1693). The order of the court denying the petition for rehearing was entered before the Board could submit an answer to it, and the order specified no ground (R. 1695). It may not be presumed that the court considered upon its merits a contention thus first raised after judgment. In these circumstances, the decision below cannot be taken as an adjudication upon the validity of the "work relief" provision or as in conflict with the cases holding such a provision invalid.[8]

[8] Prior to their decisions in the *Leviton*, *Ritzwoller*, and *Tovrea* cases, the Second, Seventh, and Ninth Circuits enforced the "work relief" provision in cases where its validity was not challenged. *National Labor Relations Board* v. *National Casket Co.*, 107 F. (2d) 992 (C. C. A. 2d) (see 12 N. L. R. B., at 175–176); *National Labor Relations Board* v. *Lightner Publishing Corp.*, decided July 1, 1940 (C. C. A. 7th) (see 12 N. L. R. B., at 1264); *North Whittier Heights Citrus Association* v. *National Labor Relations Board*, 109 F. (2d) 76 (C. C. A. 9th), certiorari denied, No. 853, last Term (see 10 N. L. R. B., at 1297–1298). In the *National Casket* case the court said, "The validity of this provision has not been argued, and we express no opinion on the point" (107 F. (2d), at 998). See also Brief in Opposition and the Supplemental Memorandum for the Board in *J. Greenebaum Tanning Co.* v. *National Labor Relations Board*, pending on petition for certiorari, No. 152, this Term; Brief in Opposition in *Subin* v. *National Labor Relations Board*, pending on petition for certiorari, No. 280, this Term.

3. Petitioner attacks the provisions of the Board's order directing it to bargain with the Union at Glenrock and Big Muddy without "at least" holding an election, apparently on the ground that the Union had either lost its majority at the time of the hearing or that its majority had become questionable (Pet. 13–15, 29–34). There is no clear showing that the Union's majority was dissipated at either place.[9] Further, the Board

[9] At Glenrock, the unchallenged findings of the Board establish that the Glenrock Association was a company-dominated organization (*supra*, p. 5), so that the designation of that organization by a majority of the employees in June 1937 (R. 557, 1499), upon which petitioner relies (Pet. 13, 29), clearly did not operate to change the freely chosen representative. *National Labor Relations Board* v. *Bradford Dyeing Assn.*, No. 588, last Term, decided May 20, 1940. At Big Muddy, petitioner relies upon the formation of "an independent union" in June 1937 (Pet. 14, 30, 34). At that time a majority of the Big Muddy employees signed a petition purporting to found an "association" and appointing a "temporary" bargaining committee until a permanent committee should be appointed (R. 1647–1648, 1311, 1323–1324). But no permanent committee was ever appointed, the association never held a meeting, had no name or bylaws, collected no dues, never presented grievances, or conferred with the management, and, according to its organizer, "we never did start" (R. 1323, 1313, 1322–1325). We do not believe that this abortive attempt to create a new agency can be taken as a revocation of the Union's designation as bargaining representative.

Petitioner's further reference (Pet. 13–14, 29–30) to a decline in the Union's membership at Glenrock from a total of 12 to a total of 4, and at Big Muddy from a total of 9 to a total of 4, between July or August 1935 and the date of the hearing (R. 1614), is misleading, since the Union's majority was at no time based on its actual membership, but on its

found that any defections from the Union were directly attributable to petitioner's unfair labor practices in refusing to bargain with the Union, and at Glenrock to the additional factor of petitioner's support and encouragement of the illegal Employees Council Plan and its continuation, the Glenrock Association (R. 70–71). The court below concurred in the finding, holding it a "reasonable assumption" that any diminution in union membership was caused by petitioner's unfair labor practices, that "an employer cannot discredit a duly designated bargaining agency of its employees by refusing to bargain with it and then be allowed to take advantage of a loss in membership due to its wrongful act," and that "an order requiring the employer to bargain as contemplated by the act is reasonably necessary and proper to overcome the effect of the interference with self-organization" (R. 1659, 1658, 1864).

The decision of the court below that a loss of majority following a refusal to bargain is presumably due to such refusal and may be disregarded by the Board in issuing its bargaining order, is in accord with many decisions of other Federal courts of appeals. *National Labor Relations Board* v. *Somerset Shoe Co.*, 111 F. (2d) 681 (C.

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designation in July 1935 as bargaining representative by 46 out of 80 employees in the appropriate unit at Glenrock (R. 57; 1460–1461, 1421) and by 28 out of 35 employees in the appropriate unit at Big Muddy (R. 42–43; 1435–1436, 1602–1603).

C. A. 1st); *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4th); *Hartsell Mills Co.* v. *National Labor Relations Board*, 111 F. (2d) 291 (C. C. A. 4th); *Ritzwoller Co.* v. *National Labor Relations Board*, decided May 8, 1940 (C. C. A. 7th); *Bussmann Mfg. Co.* v. *National Labor Relations Board*, 111 F. (2d) 783 (C. C. A. 8th); *International Association of Machinists* v. *National Labor Relations Board*, 110 F. (2d) 29 (Ct. App., D. C.); see also *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2nd), certiorari denied, 304 U. S. 576; *National Labor Relations Board* v. *Louisville Refining Co.*, 102 F. (2d) 678 (C. C. A. 6th), certiorari denied, 308 U. S. 568; *National Labor Relations Board* v. *Biles-Coleman Lumber Co.*, 96 F. (2d) 197, 98 F. (2d) 18 (C. C. A. 9th). The *International Association of Machinists* case, *supra*, is pending argument in this Court on writ of certiorari granted, No. 16, this Term. We believe that for the reasons stated by the court below in its decision and which were presented to this Court in detail in the Board's brief (pp. 39–60) in *National Labor Relations Board* v. *Bradford Dyeing Assn.*, No. 588, last Term, decided May 20, 1940, the decision below is clearly correct.[*]

[*] Petitioner is in error in asserting (Pet. 33–34) that the Board now orders elections where there has been a possible loss of majority following a refusal to bargain. The Board decisions cited deal with the entirely different situation of an original determination of a bargaining representative under section 9 when there are conflicting claims.

In two cases cited by petitioner (*National Licorice Company* v. *National Labor Relations Board*, 104 F. (2d) 655, and *National Labor Relations Board* v. *American Manufacturing Company*, 106 F. (2d) 61) and in a third case not cited by petitioner (*Stewart Die Casting Corp.* v. *National Labor Relations Board* (C. C. A. 7th) July 3, 1940), the Second and Seventh Circuits, upon representations of loss of majority, have thought it a proper exercise of their discretion to condition enforcement of a bargaining order upon proof of majority in an election.[10] For the reasons stated above, we think that these decisions are unsound, but they are not clearly in conflict with the decision below. Each case represents an application of a supposed discretionary authority and hence, in the view of

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[10] Petitioner also cites (Pet. 31) *National Labor Relations Board* v. *Bradford Dyeing Ass'n.*, 106 F. (2d) 119 (C. C. A. 1st); *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240; *Cupples Co.* v. *National Labor Relations Board*, 106 F. (2d) 100; and *Hamilton Brown Shoe Co.* v. *National Labor Relations Board*, 104 F. (2d) 49 (C. C. A. 8th). The *Bradford Dyeing* decision was reversed by this Court, No. 588, last Term, decided May 20, 1940. The *Fansteel* and *Cupples* cases are plainly inapposite. The loss of majority in the *Fansteel* case was indisputably brought about by reasons other than the unfair labor practices and the *Cupples* case presents no question of loss of majority whatever. The *Hamilton-Brown* decision has been overruled in principle by, or is at least of doubtful authority in view of, the later decision of the same circuit in *Bussmann Mfg. Co.* v. *National Labor Relations Board*, 111 F. (2d) 788.

the deciding court, turned upon its particular facts.[11]

4. Petitioner challenges the bargaining order on the further ground (Pet. 34–39) that it requires petitioner to bargain with Oil Workers International Union, whereas petitioner's refusals to bargain were with International Association of Oil Field, Gas Well and Refinery Workers of America. The Board found, however, that except for the change in name, Oil Workers International Union is the same organization as International Association of Oil Field, Gas Well and Refinery Workers of America (R. 41, 43). The court below concurred in this finding (R. 1652–1653). The question of fact as to the identity of the organizations having been resolved against petitioner both by the Board and by the court below, no question worthy of review by this Court is presented. Further, the

[11] E. g., in the *National Licorice* case, the union's representation of the men at the time of the refusal to bargain was termed "tentative" by the court, which pointed out that the employees' selection had been expressed only in applications for membership which had not been acted upon by the union, that an unsuccessful strike had thereafter occurred, and that the union's membership was not shown to have become any more definite at any time. And in the *American Manufacturing* case the court's action was predicated in part upon a stipulation at the hearing that a majority of the employees, if called as witnesses, would testify that they no longer wanted to be represented by the union with which the employer refused to bargain.

evidence affords full support for the challenged finding.[12]

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[12] The name of the organization was changed to Oil Workers International Union at the eighth annual convention of International Association of Oil Field, Gas Well and Refinery Workers of America held in June 1937 (R. 1543, 1547). The organization retained the same central offices and the same president and other officers, and continued to use stationery and letterheads bearing the old name until the supply was exhausted (R. 677–678, 686). The amendments to the constitution which were enacted at the convention effected no material alterations (R. 1549–1551, 1551–1553); contrary to petitioner's unsupported assertions (Pet. 9, 36) that there was a change from "craft" organization to "industrial" organization, both the original and the amended constitution expressly provide for "industrial" organization (R. 1550, 1551–1552).

Nor is there merit in petitioner's contention that the change of affiliation from A. F. of L. to C. I. O. effected a change in the identity of the organization. The very concept "affiliation" implies that that which "affiliates" does not become identical with that which is "affiliated with" but retains its individual character and identity. (See definition of "affiliate" in *New Standard Dictionary of the English Language, Funk & Wagnalls Co.* (1937)). Particularly is this so in the case of the American Federation of Labor which is "a voluntary national federation of *autonomous* unions." (Lorwin, *The American Federation of Labor*, Brookings Institution, Wash., D. C., 1933, pp. 301, 336–337; italics added.)

Numerous decisions hold that even the identity of a local union is not lost by a change in affiliation with a parent body. See *Shipwrights, Joiners & Calkers' Assn.* v. *Mitchell*, 60 Wash. 529, 111 Pac. 780; *World Trading Corp.* v. *Kolchin*, 166 Misc. 854, 2 N. Y. S. (2d) 195 (N. Y. Sup. Ct.); *Labonite* v. *Cannery Workers', etc., Union*, 197 Wash. 543, 86 P. (2d) 189; *cf. Busbin* v. *Oliver Lodge No. 335, etc.*, 279 N. W. 277; *Kelso* v. *Cavanagh*, 137 Misc. 653 (N. Y. Sup. Ct.). In contrast, the present case is concerned with the relations between

CONCLUSION

No question worthy of review is properly presented. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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independent organizations associated in a federation, each constituent member of which retains autonomy. The conclusion reached in the above cited cases therefore applies *a fortiori* to such action on the part of an autonomous national union, while a contrary conclusion as to a local union, suggested in some of the cases cited by petitioner, would not necessarily be inconsistent with the determinations of the Board here.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Secs. 157, 158, 159, 160) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> (2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. * * *.
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *.
>
> * * * * * *
>
> (5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).
>
> SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes,

shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

* * * * *

SEC. 10. * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) * * * No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. * * *.

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